

COMPOSITE EXHIBIT "D"

From: [Rich Dolder](#)
To: ["dax@dglattorneys.com"](mailto:dax@dglattorneys.com)
Cc: [Anna Hemmings](#)
Subject: Hirsh / form of report
Date: Wednesday, June 5, 2024 2:31:19 PM
Attachments: [Expert report form.docx](#)

Dax,

Attached is a form of report. Give me a call to discuss.

Rich

Richard E. Dolder
Slaphey & Sadd, LLC
352 Sandy Springs Circle, NE
Atlanta, GA 30328
(404) 255-6677 (office)
(404) 345-0590 (mobile)

MH 000872

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

DIRECT GENERAL INSURANCE
COMPANY,

Plaintiff,

V.

CHRISTOPHER EVANS and POLINA DENISSOVA, individually and as co-administrators of the ESTATE OF ANDREW EVANS, ROGER HARTSFIELD and D. MAX HIRSH, as administrator of the ESTATE OF SHANNON HARTSFIELD,

Defendants.

CIVIL ACTION
FILE NO. 1:23-cv-03491-ELR

WRITTEN REPORT OF DAX LOPEZ, ESQ.,
PREPARED PURSUANT TO RULE 26(a)(2)(B)

I. STATEMENT OF OPINIONS

Rule: “a complete statement of all opinions the witness will express and the basis and reasons for them.”

II. DATA CONSIDERED BY THE WITNESS

Rule: “the data or other information considered by the witness in forming
[the opinions].”

III. EXHIBITS USED TO SUMMARIZE OR SUPPORT OPINIONS

IV. QUALIFICATIONS AND PUBLICATIONS

A. Qualifications

See resume attached as Exhibit A.

B. Publications Authored in Previous 10 Years

List them

V. CASES IN WHICH WITNESS HAS TESTIFIED

[List of all cases in which, during the previous four years, you have testified as an expert at trial or by deposition.]

VII. COMPENSATION

My compensation is \$600 an hour.

Dax Lopez, Esq.

Date: _____

From: [Dax Lopez](#)
To: [Rich Dolder](#)
Cc: [Anna Hemmings](#)
Subject: RE: Hirsh / form of report
Date: Thursday, June 6, 2024 1:47:31 AM

Rich,

Am at the state bar annual meeting at Amelia. I will review next Tuesday when I return to the office.

Thanks

Dax

From: Rich Dolder <Rich@lawyersatlanta.com>
Sent: Wednesday, June 5, 2024 2:31 PM
To: Dax Lopez <dax@dglattorneys.com>
Cc: Anna Hemmings <Anna@lawyersatlanta.com>
Subject: Hirsh / form of report

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Caution: EXTERNAL EMAIL

MH 000875

From: [Rich Dolder](#)
To: [Dax Lopez](#)
Cc: [Anna Hemmings](#)
Subject: Re: Hirsh / form of report
Date: Thursday, June 6, 2024 6:44:34 AM

Great. Enjoy.

Richard E. Dolder
Slaphey & Sadd, LLC
352 Sandy Springs Circle, NE
Atlanta, GA 30328
(404) 255-6677 (office)
(404) 345-0590 (mobile)

On Jun 6, 2024, at 1:47 AM, Dax Lopez <dax@dglattorneys.com> wrote:

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Am at the state bar annual meeting at Amelia. I will review next Tuesday when I return to the office.

Thanks
Dax

From: Rich Dolder <Rich@lawyersatlanta.com>
Sent: Wednesday, June 5, 2024 2:31 PM
To: Dax Lopez <dax@dglattorneys.com>
Cc: Anna Hemmings <Anna@lawyersatlanta.com>
Subject: Hirsh / form of report

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Richard E. Dolder
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MH 000876

Caution: EXTERNAL EMAIL

MH 000877

From: [Rich Dolder](#)
To: ["Dax Lopez"](#)
Cc: [Anna Hemmings](#)
Subject: RE: Hirsh / form of report
Date: Thursday, June 20, 2024 11:31:42 AM
Attachments: [Dax's Expert Report.docx](#)

Richard E. Dolder
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From: Dax Lopez <dax@dglattorneys.com>
Sent: Thursday, June 20, 2024 10:41 AM
To: Rich Dolder <Rich@lawyersatlanta.com>
Cc: Anna Hemmings <Anna@lawyersatlanta.com>
Subject: RE: Hirsh / form of report

Rich,

Per our discussion. See attached with my notes.

Thanks
Dax

From: Rich Dolder <Rich@lawyersatlanta.com>
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Subject: Hirsh / form of report

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Richard E. Dolder
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MH 000878

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MH 000879

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

DIRECT GENERAL INSURANCE
COMPANY,

Plaintiff,

V.

CHRISTOPHER EVANS and POLINA DENISSOVA, individually and as co-administrators of the ESTATE OF ANDREW EVANS, ROGER HARTSFIELD and D. MAX HIRSH, as administrator of the ESTATE OF SHANNON HARTSFIELD,

Defendants.

CIVIL ACTION
FILE NO. 1:23-cv-03491-ELR

WRITTEN REPORT OF DAX LOPEZ, ESQ.,
PREPARED PURSUANT TO RULE 26(a)(2)(B)

I. STATEMENT OF OPINIONS

Rule: “a complete statement of all opinions the witness will express and the basis and reasons for them.”

NOTE: It would be helpful to have a list of questions you would like me to answer or opine upon.

I have been asked to opine on the usual and customary practice of attorneys who represent people (or their families) injured by insured tortfeasors. The actions on which I opine begin with a tragic car accident on July 27, 2018. The accident

involved Shannon Hartsfield who drove a car in which Nancy Evans, Andrew Evans and Richie Willis were passengers. All four were killed as a proximate result of the accident. The other vehicle was driven by Shannon Justus and had two passengers, William Justus and Drake Justus. The three Justuses reported injuries.

Shannon Hartsfield was clearly at fault for the accident, as she appears to have run a stop sign. She had automobile insurance with Direct General Insurance Company with liability limits of \$25,000 per person and \$50,000 per accident. Shannon Justus arguably bore a very small amount of fault for the accident, as she arguably could have kept a better look out. She had automobile insurance with Country Financial with liability limits of \$100,000 per person and \$300,000 per accident.

This scenario presents a case of multiple claimants and insufficient limits. Such situations are regrettably common and well known to those who represent people with claims against insured tortfeasors. When representing a claimant in this situation, a reasonable and prudent attorney acting consistent with the usual and customary practice of our profession would customarily consider the following:

- A. Attorneys have a duty to represent their clients zealously and within the bounds of the rules of our adversary system. Attorneys must be competent and diligent in their representation. (See Georgia Rules of Professional Conduct, Preamble, Rule 1.1 and Rule 1.3)
- B. The Georgia Court of Appeals has ruled that insurance companies may, in good faith and without notification to others, settle part of multiple claims against its insured even though such settlements deplete or exhaust the policy limits so that remaining claimants have no recourse against [the] insurer. *Allstate Ins. Co. v. Evans*, 200 Ga. App. 713, 714, 409 S.E.2d 273, 274 (1991).¹

¹ I do not offer opinions on the law or intend to instruct the Court or the jury as to what the law is. However, some of my opinions are based, in part, on how the law influences customary practice of an attorney under like and similar circumstances.

- C. Georgia has codified the manner in which attorneys make demands on behalf of injured claimants in the scenario presented here. O.C.G.A. § 9-11-67.1.
- D. The Supreme court of Georgia has ruled as follows: “An insurance company may be liable for damages to its insured for failing to settle the claim of an injured person where the insurer is guilty of negligence, fraud, or bad faith in failing to compromise the claim.” *S. Gen. Ins. Co. v. Holt*, 262 Ga. 267, 268, 416 S.E.2d 274, 276 (1992). Whether an insurer breached its duty to settle, one must determine “whether the insurer had an opportunity to make an effective compromise.” *Cotton States Mut. Ins. Co. v. Brightman*, 276 Ga. 683, 685, 580 S.E.2d 519, 521 (2003).

Based on these considerations and my review of the information provided regarding the facts and circumstances of this case, I have developed the following opinions:

- 1. A zealous, competent and diligent attorney would usually and customarily recognize this case as one where injured claimants (or attorneys representing them) may need to “race for the limits.”
- 2. A zealous, competent and diligent attorney would recognize that Direct General could and very well might exhaust its limits paying other claimants.
- 3. A zealous, competent and diligent attorney would recognize that in order to make a settlement offer, the better practice would be to comply with O.C.G.A. § 9-11-67.1 as soon as reasonably possible.
- 4. The August 9, 2018, demand signed by Rory Chumley complied with O.C.G.A. § 9-11-67.1 and was reasonable in all respects.
- 5. The August 9, 2018, letter does not bear the hallmarks of what Direct General alleges to be a “set up.” The letter is an objective opportunity to settle. Further, the time-limited demand to Country Financial demonstrates how counsel for Mr. Evans actually did conduct himself

when the insurer treated the time-limited demand as set forth in O.C.G.A. § 9-11-67.1.

6. A zealous, competent and diligent attorney would recognize that the September 6, 2018, letter regarding a Global Settlement Conference was a counteroffer and rejection of the August 9, 2018, offer.
7. Such an attorney would further recognize that Direct General faced potential liability in excess of its policy limits, making acceptance of the policy limits (or less at a Global Settlement Conference) impossible without consultation with the client concerning the possibility of a recovery in excess of policy limits.
8. The attorneys representing Andrew Evans's parents behaved reasonably and consistent with the usual and customary practice in our profession by filing suit and bringing and exploring an estate claim.

II. DATA CONSIDERED BY THE WITNESS

See Exhibit A. [Dax, we will prepare]

III. EXHIBITS USED TO SUMMARIZE OR SUPPORT OPINIONS

None, other than documents I might be shown and questioned about.

IV. QUALIFICATIONS AND PUBLICATIONS

A. Qualifications

See resume attached as Exhibit B. (

B. Publications Authored in Previous 10 Years

None.

V. CASES IN WHICH WITNESS HAS TESTIFIED

None.

VII. COMPENSATION

My compensation is \$600 an hour.

Dax Lopez, Esq.

Date: _____

From: [Rich Dolder](#)
To: ["Dax Lopez"](#)
Cc: [Anna Hemmings](#)
Subject: RE: Hirsh / form of report
Date: Thursday, June 20, 2024 7:42:27 PM

Looking good. I will circulate to my team. Let's plan on finalizing Monday.

Thanks!

Richard E. Dolder
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(404) 255-6677 (office)
(404) 345-0590 (mobile)

From: Dax Lopez <dax@dglattorneys.com>
Sent: Thursday, June 20, 2024 3:07 PM
To: Rich Dolder <Rich@lawyersatlanta.com>
Cc: Anna Hemmings <Anna@lawyersatlanta.com>
Subject: RE: Hirsh / form of report

Rich,

I made a few minor edits to the report.
I have also attached my CV.

Let me know if you need me to elaborate on any issue.

Thanks
Dax

From: Rich Dolder <Rich@lawyersatlanta.com>
Sent: Thursday, June 20, 2024 11:32 AM
To: Dax Lopez <dax@dglattorneys.com>
Cc: Anna Hemmings <Anna@lawyersatlanta.com>
Subject: RE: Hirsh / form of report

Richard E. Dolder
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352 Sandy Springs Circle, NE
Atlanta, GA 30328

MH 000885

(404) 255-6677 (office)
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From: Dax Lopez <dax@dglattorneys.com>
Sent: Thursday, June 20, 2024 10:41 AM
To: Rich Dolder <Rich@lawyersatlanta.com>
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Caution: EXTERNAL EMAIL

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MH 000886

From: [Dax Lopez](#)
To: [Rich Dolder](#)
Subject: FW: Attached Image
Date: Monday, June 24, 2024 11:41:52 AM
Attachments: [0621_001.pdf](#)

See attached.

From: anna@dcglawfirm.com <dgl@dglattorneys.com>
Sent: Monday, June 24, 2024 12:15 PM
To: Dax Lopez <dax@dglattorneys.com>
Subject: Attached Image

Caution: EXTERNAL EMAIL

MH 000887